

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM E. STIRTON, JR., and DOTTIE
MAE WARD,

Plaintiffs, CIVIL CASE NO. 05-40378

v.

MICHIGAN TOOLING ASSOCIATION, a/k/a
DETROIT TOOLING ASSOCIATION,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Defendant.

_____ /

ORDER ACCEPTING REPORT AND RECOMMENDATION

Before the Court is Defendant's motion to dismiss, Plaintiffs' motion to remand, and the Report and Recommendation of the Honorable R. Steven Whalen, United States Magistrate Judge. The Magistrate Judge recommends that this Court grant in part and deny in part Defendant's motion to dismiss, deny Plaintiffs' motion to remand, and permit Plaintiffs to file an amended complaint. The Magistrate Judge filed the Report and Recommendation on August 30, 2006 and notified all the parties that any objections must be filed within ten days of service. Neither party has filed objections to the Report and Recommendation.

The Court's standard of review for a Magistrate Judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). As the Supreme Court observed, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual

or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Since neither party has filed objections to the Report and Recommendation, the Court need not conduct a review.

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry 18] is **ACCEPTED and ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Defendant’s motion to dismiss [docket entry 9] is **GRANTED IN PART AND DENIED IN PART** as follows: (1) Plaintiffs’ state law claims of breach of contract and promissory estoppel are **DISMISSED**; (2) the Complaint is construed as raising a claim under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, *et seq.*; (3) Defendant’s motion to dismiss is **DENIED** as to the ERISA claim; and (4) Plaintiffs are permitted to file an amended complaint elucidating more precisely the nature of the ERISA claim and the relief sought.

IT IS FURTHER ORDERED that Plaintiffs’ motion to remand [docket entry 12] is **DENIED**.

SO ORDERED.

Dated: September 26, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on September 26, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Elaine A. Parson; Chrisdon F. Rossi; Jeffrey D. Wilson, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: _____.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
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